FILED
JAMES BONINI
CLERK

UNITED STATES DISTRICT COURT 08 OCT 23 PM 2:45
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JEFFREY C. SANDERS **Plaintiff,** **v.** **STEPHEN J. PRONAI, in his individual and official capacity as Prosecutor of Madison County, Ohio** **23 West High Street** **London, Ohio 43140-0618** **JAMES P. SABIN in his individual and official capacity as Sheriff of Madison County, Ohio** **23 West High Street** **London, Ohio 43140-0618,** **ERIC SEMLER, in his individnal and official capacity as a Deputy Sheriff of Madison County, Ohio,** **23 West High Street** **London, Ohio 43140-0618,** **and** **CHRIS SNYDER, DAVID HUME and, ROBERT HACKETT, in their official capacities as members of the Board of Commissioners of Madison County, Ohio** **1 North Main Street** **London, Ohio, Ohio 43140-0618** **Defendants**	:	**Civil Action No. 2 : 08 CV 1001** **Judge** JUDGE SARGUS MAGISTRATE JUDGE KING **COMPLAINT FOR DAMAGES** **(Jury Demand Endorsed Hereon)**

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NATURE OF THE COMPLAINT

1. This is a civil action for damages under 42 U.S.C. §1983, 42 U.S.C. § 1985, and the common law of the State of Ohio arising from the malicious prosecution of Plaintiff.

2. Defendants, Pronai and Semler, individually and in concert with others maliciously conspired to bring false charges, forgery, fraud and misuse of a credit card. Defendants knew that these charges were completely and utterly unsupported by probable cause, documentary evidence, other witnesses, and even the accusers themselves. Defendants willfully ignored and were deliberately indifferent to evidence of Plaintiff's actual innocence.

3. As a result of Defendants' actions, Plaintiff has suffered deprivations of the rights guaranteed to him under the Fourth and Fourteenth Amendments to the Constitution of the United States, he has suffered economic, emotional, and physical harm; he has suffered irreparable harm to his reputation; and he has incurred a substantial amount in legal fees defending himself against criminal prosecutions the Defendants knew were baseless.

JURISDICTION

4. This court has subject matter jurisdiction of this complaint and the within statutory claims pursuant to 28 U.S.C. §1331 and §1343, because this is an action pursuant to 42 U.S.C. §1983 to enforce rights guaranteed by the Fourth, Sixth and Fourteenth Amendment to the Constitution and the laws of the United States.

5. Venue is proper in this district pursuant of 28 U.S.C. §1391 because the unlawful actions complained of occurred in the City of London, Madison County, Ohio.

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PARTIES

6. Plaintiff, Jeffrey C. Sanders, is an individual citizen of the United States and a resident of the City of Urbana, Ohio, and at all times material herein, operated a business known as Sanders Sales and Service, Inc.

7. Defendant Stephen J. Pronai, at all times material, was the Prosecutor of Madison County, Ohio, and an employee of the Madison County Board of Commissioners.

8. Defendant James P. Sabin, at all times material, was the Sheriff and chief law enforcement official of Madison County, Ohio and an employee of the Madison County, Ohio Board of Commissioners.

9. Defendant Eric Semler, at all times material, was a sergeant in the Madison County Sheriff's Department who was assigned to investigate charges against Plaintiff.

10. Defendants Chris Snyder, David Dhume, and Robert Hackett, at all times material hereto, were members of Board of Commissioners of Madison County, Ohio.

FACTUAL BACKGROUND

11. Sanders Sales & Service, Inc. at all material times, was an Ohio corporation engaged in the business of selling farm equipment, together with parts and maintenance services for such equipment, from facilities in the cities of Urbana and London, Ohio ("Dealership").

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12. Michael K. Pitstick and Neil A. Pitstick are natural brothers who at all times material, were shareholders or principals in various entities involved in farming and related business, in or about Madison County, Ohio (the "Pitsticks").

13. Donald E. Bradley is an individual citizen of Ohio who, at all material times, was a full-time employee of the Dealership ("Bradley").

14. At material times, the Dealership and Case America LLC ("Case Manufacturing") as the successor in interest of Case Corporation, were parties to that certain Agricultural Equipment Sales & Service Agreement effective May 30, 1990, pursuant to which the Dealership was authorized to sell farm equipment manufactured by Case Manufacturing ("Dealership Agreement").

15. Qualified purchasers of Case Manufacturing equipment had the option of financing their purchases with CNH Capital America, LLC, a separate Delaware corporation ("Case Credit").

16. To facilitate sales by authorized dealers to their high volume customers, Case Manufacturing provided its authorized dealers certain discounts from the price such dealers otherwise would pay to purchase Case Manufacturing equipment ("Discounts").

17. Case Credit offered a six-month waiver of interest to certain customers of authorized dealers who financed their purchases of new farm equipment through Case Credit ("Waivers").

The Pitsticks Plan To Obtain Equipment Free of Charge.

18. The Pitsticks conceived a plan to acquire and use Case Manufacturing equipment without any expenditure of capital on their part by fully exploiting the Discounts and Waivers (the "Roll Plan").

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19. The Roll Plan contemplated a recurring series of transactions in which the Pitsticks would: (a) purchase farm equipment at a substantial Discount; (b) finance their purchases through Case Credit without a down payment; (c) use the equipment until expiration of the Waiver; (d) trade-in the used equipment; and (e) to replace the used equipment traded-in by purchasing new equipment at a Discount and subject to a new Waiver.

20. Since Case Manufacturing sold its equipment exclusively through its authorized dealers, the Roll Plan could not be implemented without the Pitsticks working through an authorized dealer.

21. The Pitsticks first approached the Equipment Superstore, an authorized dealer then located in London, Ohio, which rejected the Roll Plan because it was not economically feasible.

Bradley Conspires With The Pitsticks.

22. The Pitsticks had developed a personal and business relationship with Bradley independent of any business relationship with the Dealership.

23. The Pitsticks approached Bradley with the Roll Plan and Bradley conspired and agreed with the Pitsticks to implement the Roll Plan through the Dealership.

24. Each of the Pitsticks had applied for a personal loan to build new homes and needed a document to satisfy financial institutions, other than Case Credit, that the Pitsticks were not immediately required to expend capital on the acquisition of, and payment for farm equipment.

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25. Bradley authored one or more versions of a document which purported to memorialize the understanding among the Pitsticks, Case Manufacturing, Case Credit and the Dealership with respect to the Roll Plan (the "Document").

26. Bradley represented that the provisions of the Document integrated his separate and independent conversations with each of the Pitsticks, Case Credit, Case Manufacturing and the Dealership.

27. At least two versions of the Document were signed by the Pitsticks on the one hand and Plaintiff and Bradley for the Dealership on the other hand.

28. Beginning in November 2002 and continuing through December 2003, the Pitsticks through the Dealership, ordered, received and used millions of dollars of farm equipment manufactured by Case Manufacturing.

The Pitsticks Inflate Contracts.

29. The Pitsticks' acquisition of the farm equipment was financed by Case Credit pursuant to approximately 57 separate Retail Installment Contracts ("Contracts").

30. Each of the Contracts, set forth the purchase price of equipment, any credit for trade-ins and the amount owed by the Pitsticks to a third party for the equipment traded-in.

31. The purchase price of the farm equipment set forth in each of the Contracts reflected a nineteen percent (19%) discount from the Dealership's net purchase price for equipment which qualified for a Discount.

32. The Pitsticks requested and authorized Plaintiff to submit to Case Credit, Contracts for a purchase price above the actual cost of the equipment subject thereto.

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33. Plaintiff paid the Pitsticks the difference between the actual cost of the equipment and the amount by which the Pitsticks had requested the purchase price to be inflated.

34. In November 2003, the Equipment Superstore contacted the Pitsticks about purchasing a piece of used Case Manufacturing equipment and the Pitsticks learned that they owed more on that piece of equipment than the Equipment Superstore was willing to pay.

35. Bradley made false allegations to Case Credit and Case Manufacturing that Sanders had defrauded the Pitsticks on some or all of the Contracts.

36. Michael and Neil Pitstick, separately and together, made false allegations to Case Credit and Case Manufacturing that Plaintiff had forged their names to certain Contracts and had inflated the purchase price on other Contracts.

The Pitsticks Threaten Criminal Prosecution And Then Sue Plaintiff.

37. In the midst of the turmoil which resulted from their false allegations, the Pitsticks threatened to pursue a criminal prosecution of Plaintiff which, they promised, could be avoided if Plaintiff's family transferred ownership and control of the Dealership to the Pitsticks.

38. On or about January 19, 2004, Bradley conspired, agreed with, and assisted the Pitsticks in their plan to obtain ownership and control of the Dealership.

39. Bradley and the Pitsticks agreed that upon the transfer of ownership of the Dealership to the Pitsticks, Bradley would become the president of the Dealership.

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40. Despite pressuring Plaintiff's family as described above, the Pitsticks decided not to pursue ownership and control of the Dealership and instead the Pitsticks pursued civil action against Plaintiff.

41. On January 22, 2004, the Pitsticks filed a civil complaint for money damages against Plaintiff and the Dealership ("Original Action") in the Common Pleas Court of Madison County, Ohio ("State Court").

42. The Pitsticks' civil prosecution of Plaintiff is intertwined inextricably with the Defendant Pronai's criminal prosecution of Plaintiff.

43. In the Original Action, the Pitsticks alleged that Plaintiff and the Dealership through fraud, forgery and breach of contract, deprived the Pitsticks of substantial amounts of money in connection with the Contracts.

44. On February 5, 2004, the Pitsticks moved for a temporary restraining order as to Plaintiff.

45. In his affidavit in support of said motion, Neil Pitstick made several material representations to the Court regarding Plaintiff and the Dealership.

46. On February 6, 2004, Bradley gave a sworn statement to counsel for the Pitsticks ("Bradley Statement") which further supported the Pitsticks' false allegations and in which Bradley stated that Plaintiff was a dishonest businessman.

47. On February 9, 2004, the Pitsticks filed a motion for the appointment of a receiver for the Dealership and that same day, the State Court (a) issued a preliminary injunction enjoining Plaintiff from being on or about the premises of the Dealership; and (b) appointed a receiver for the Dealership.

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Defendant Pronai Controls Investigation.

48 The Pitsticks appeared at the State Court, in connection with the issuance of the preliminary injunction and appointment of a receiver and, while in the hallway outside the courtroom, they were approached by Defendant Pronai regarding a criminal prosecution of Plaintiff.

49. Discovery in the Original Action began on or about February 23, 2004.

50. On February 26, 2004, the Pitsticks' counsel, sent Defendant Pronai the Bradley Statement and certain other documents said to support the Pitsticks motion for injunctive relief.

51. Upon information and belief, Defendant Pronai informally requested the documents from the Pitsticks' counsel.

The Pitsticks Sue Case Credit and Case Manufacturing.

52. On April 14, 2004, the State Court granted Plaintiffs leave to amend the Original Action to add Case Manufacturing and Case Credit as defendants.

53. On April 23, 2004, rather than amend the Original Action to add Case Manufacturing and Case Credit, the Pitsticks, on April 23, 2004, filed a separate case with the State Court, styled *Pitsticks Farms v. CNH Capital Corp., et al.*, Case No. 2004CV-04-125, in which they sought among other things, declaratory judgment against Case Credit and Case Manufacturing ("Dec. Action").

54. On May 25, 2004, Case Credit filed its Notice of Removal of the Dec. Action to the U.S. District Court, Southern District of Ohio, Eastern Division in what was

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designated as *Pitstick Farms, Inc., et al. v. CNH Capital Corporation, et al.*, Case No. 2:04cv00435.

Neil Pitstick Admits To Inflating Contracts.

55. On July 15, 2004, Neil Pitstick admitted under oath that the Pitsticks requested Plaintiff to inflate the Contracts. Page 29 of the transcript of Neil Pitstick's deposition taken that day includes the following dialogue:

Q. WHERE THERE EVER ANY OCCASIONS, MR. PITSTICK, WHERE YOU WERE, USING YOUR ONE HUNDRED THOUSAND DOLLAR FIGURE FOR THE SAKE OF DISCUSSION, WHEN IT WOULD BE WRITTEN UP AT YOUR REQUEST FOR $110,000 AND THEN YOU WOULD RECEIVE TEN THOUSAND DOLLARS BACK FROM DON BRADLEY?

A. FROM DON BRADLEY, NO.

Q. HOW ABOUT JEFF SANDERS?

A. YES.

Q. SO IF I UNDERSTAND THIS SCENARIO YOU GOT ONE HUNDRED THOUSAND DOLLARD NET PRICE ON THE INVOICE, YOU WOULD REQUEST JEFF SANDERS TO WRITE IT FOR $110,000, THEY WOULD SEND PAPERWORK THROUGH, YOU WOULD BE DEBITED $110,000 AND THEN JEFF SANDERS OR SANDERS SALES WOULD GIVE YOU A CHECK FOR $10,000, HAVE I GOT THAT RIGHT?

A. RIGHT.

56. While they were persecuting Plaintiff in a civil action, the Pitsticks through their attorneys were urging Defendant Pronai to file a criminal case against Plaintiff to force Plaintiff's cooperation with the Pitsticks in the Dec. Action.

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57. On August 14, 2004, in direct contradiction to Neil Pitsticks July 15, 2004 sworn testimony, the Pitsticks provided written statements to Defendant Semler in which they alleged that Plaintiff fraudulently inflated Contract prices and forged their name to certain Contracts.

58. On August 16, 2004, Bradley provided a written statement to Defendant Semler in which he alleged that Plaintiff fraudulently inflated Contracts.

59. Each of the Bradley Statement, the sworn statement of Neil Pitstick in support of his February 5, 2004 affidavit, the Pitsticks statements of August 14, 2004 and the statement of Bradley of August 16, 2004, was materially false and intentionally misleading to further the criminal prosecution of Plaintiff.

Pronai Takes Over The Criminal Investigation.

60. Upon information and belief, Defendant Semler conducted no investigation into the Pitsticks allegations after taking the above-referenced statements, and the investigation was taken over by Defendant Pronai.

61. Defendant Sabin, the supervisor of Defendant Semler, acquiesced with Defendant Pronai taking over the criminal investigation of Plaintiff.

62. Upon information and belief, Defendant Pronai received selected documents from the Pitsticks' attorneys but failed to conduct any independent investigation into the veracity of the Pitsticks' allegations, before obtaining an indictment of Plaintiff by a grand jury for Madison County, Ohio ("Grand Jury").

63. On September 9, 2004, Defendant Pronai commenced criminal proceedings against Plaintiff through a single count indictment for forgery ("First Indictment").

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The Pitsticks Add Case Credit and Case Manufacturing.

64. Having caused a receiver to be appointed for the Dealership and later realizing that Plaintiff was not independently wealthy, the Pitsticks sued Case Credit and Case Manufacturing to have a "deep pocket" from which they hoped to recover significant amounts of money.

65. On September 16, 2004, the Pitsticks filed an Amended Complaint in State Court adding Case Manufacturing and Case Credit as defendants ("Amended Case").

66. On October 15, 2004, Case Credit filed its Notice of Removal of the Amended Case to the U.S. District Court for the Southern District of Ohio, Eastern Division, in an action styled *Pitstick Farms, Inc., et al. vs. Sanders Sales & Service, Inc., et al. Case No. 2:04cv00997.*

67. On October 28, 2004, Case Credit moved to consolidate the then removed Dec. Action with the then removed Amended Case and to remand the state law claims against non-Case defendants to State Court.

Plaintiff's Arraignment On First Indictment.

68. On November 1, 2004, Plaintiff was arraigned on the First Indictment.

69. The Pitsticks, Case Credit and Case Manufacturing engaged in motion practice before the U.S. District through the remainder of 2004.

70. While their civil case was pending before the U.S. District Court, the Pitsticks through their attorneys, with diligence and continuity, pressured Defendant Pronai to pursue criminal charges against Plaintiff.

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BCI Report Does Not Support The First Indictment.

71. On March 16, 2005, *four months after* Plaintiff's arraignment, Defendant Pronai submitted to the Ohio Bureau of Criminal Investigation and Identification ("BCI"), questioned documents with handwriting exemplars from Michael Pitstick, Neil Pitstick and Plaintiff.

72. On April 26, 2005, BCI indicated that it could give no opinion on whether Plaintiff signed any of the questioned documents.

73. On May 6, 2005, Defendant Pronai, unable to establish a case against Plaintiff for forgery, filed a Motion for Nolle Prosequi citing a need for further investigation.

74. On May 12, 2005, the State Court dismissed the criminal case brought pursuant to the First Indictment.

The Civil Case Is Remanded To State Court.

75. On May 16, 2005 the U.S. District Court (a) granted in part, Case Credit's motion to remand the Pitsticks' state law claims and to consolidate the remainder of Amended Case (No. 2:04cv00997) with the Dec. Action (No.2:04cv00435); and (b) granted in part, the Pitsticks' motion to consolidate the two federal cases and to remand the consolidated cases to state court.

76. On November 29, 2005, following motion practice, the U.S. District Court overruled Case Credit's objections and the consolidated cases were remanded to State Court ("Consolidated Case").

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77. Written discovery by Case Credit and Case Manufacturing in the Consolidated Case began in late December 2005.

78. All that time, it was evident there was a substantial likelihood that, at the urging of the Pitsticks or their attorneys, Defendant Pronai would seek another indictment against Plaintiff.

79. The parties in the Consolidated Case engaged in discovery throughout 2006. Plaintiff's participation in discovery was limited because he was under the threat of indictment. Plaintiff was forced to rely upon his constitutional privilege against self-incrimination and could not adequately defend himself against the civil allegations.

Pronai Retains The Pitsticks' Expert.

80. The Pitsticks had retained Mary Shultz, CPA, CFE ("Shultz") as an expert in connection with the fraud allegations they made in the Consolidated Case and the Pitsticks attorneys shared this information with Defendant Pronai.

81. While discovery was still on going in the Consolidated Case, Defendant Pronai also retained Shultz.

82. On August 14, 2006, Plaintiff propounded discovery interrogatories upon the Pitsticks including a request to identify any experts the Pitsticks planned to call in the Consolidated Case.

83. On August 24, 2006, Shultz sent Defendant Pronai a Preliminary Report[1] in which she failed to identify the accounting irregularities the Pitsticks had alleged in the Consolidated Case and otherwise failed to provide any support for the Pitsticks fraud claims against Plaintiff or the Dealership.

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[1] The Preliminary Report did not come to light until after the Consolidated Case ended by mistrial and until August 30, 2007 when Defendant Pronai was forced to disclose it as part of discovery in the criminal case.

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84. In their September 19, 2006 answers to Plaintiff's discovery requests, the Pitsticks identified the same Mary Shultz as their expert on the alleged accounting irregularities at the Dealership.

Defendant Pronai Prevents Disclosnre of Shultz Report.

85. On October 20, 2006, Plaintiff subpoenaed Shultz for a deposition in the Consolidated Case.

86. On October 25, 2006, Defendant Pronai filed a motion to quash the civil discovery subpoena on the ground that Ms. Shultz's work product was part of his on-going criminal investigation.

87. By quashing the aforementioned subpoena, Defendant Pronai prevented the defending parties in the Consolidated Case from learning (before the then scheduled civil trial) that there was no basis in fact for the Pitsticks' allegations of accounting irregularities at the Dealership.

Michael Pitstick Admits To Requesting Contract Inflations.

88. On November 8, 2006, Michael Pitstick admitted under oath in his deposition, that by requesting Plaintiff to inflate Contract prices, the Pitsticks could obtain a return on the equity the Pitsticks believed they were entitled to receive from certain equipment they traded-in at the Dealership.

89. Defendant Pronai knew, or upon the exercise of reasonable due diligence, should have known, that both Michael Pitstick and Neil Pitstick had given sworn statements in direct contradiction to the facts he intended to present to the Grand Jury.

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Defendant Pronai Intimidates Witnesses.

90. Defendant Pronai knew that Case Credit and Case Manufacturing and therefore, their employees were represented by counsel in the Consolidated Case.

91. Prior to the trial date in the Consolidated Case, Defendant Pronai let it be known that he was considering Case Credit and Case Manufacturing as potential additional defendants in a criminal prosecution based on precisely the same allegations made by the Pitsticks in the Consolidated Case.

92. Defendant Pronai knew or reasonably should have known, that there was no basis in fact or in law for a criminal prosecution of Case Credit or Case Manufacturing in connection with the Contracts.

93. The Consolidated Case first came on for trial on February 7, 2007 and counsel for Case Credit and Case Manufacturing were present in the courtroom.

94. Without prior notice to their counsel, Defendant Pronai directed one or more uniformed Madison County Deputy Sheriffs to physically serve a Grand Jury subpoena on employees of Case Credit and Case Manufacturing as those employees appeared to testify in the Consolidated Case.

95. Upon information and belief, Defendant Pronai thereby intended to frighten and intimidate Case Credit and Case Manufacturing employees to suppress their testimony, all for the benefit of the Pitsticks.

96. Upon information and belief, certain employees of Case Credit and Case Manufacturing were in fact frightened and intimidated by Defendant Pronai's tactics described above.